

# Draft Corrective Action Language

## Evaluation and Corrective Action for Risk-Bearing Organizations

This proposed action would amend Regulations 1300.75.4, 1300.75.4.4 and 1300.75.4.5 and adopt Regulations 1300.75.4.7 and 1300.75.4.8 of Title 28, California Code of Regulations, to read:

### **1300.75.4. Definitions.**

(e) “Solvency Regulations” means California Code of Regulations, Title 28, Regulations 1300.75.4 through 1300.75.4. 8.

(f) "Corrective action plan" (CAP) means a document containing requirements for correcting and monitoring an organization's efforts to correct any financial solvency deficiencies.

(g) “Grading Criteria” means the four criteria specified in Health and Safety Code Section 1375.4(b)(1)(A)(i), (ii), (iii), and (iv).

### **1300.75.4.7. Organization Evaluation.**

(a) Every contract involving a risk arrangement between a plan and an organization shall require the organization to comply with the Department of Managed Health Care’s, or its designated agent’s, review process and determination of the organization’s satisfaction of the Grading Criteria. The contract shall also require the organization, as part of this process, to do all of the following:

(1) Permit the Department of Managed Health Care or its designated agent to perform any of the following activities:

(A) Obtain and evaluate supplemental financial information pertaining to the organization when the organization fails to meet any of the Grading Criteria, experiences an

event that materially alters the organization's ability to remain compliant with the Grading Criteria, or the Department's review process indicates that the organization has insufficient financial or administrative capacity to continue to accept financial risk for the delivery of health care services consistent with the requirements of section 1300.70(b)(2)(H)(1).

(B) Prepare periodic progress reports describing the organization's overall performance in meeting the requirements of a Corrective Action Plan.

(b) The Department of Managed Health Care or its designated agent shall review each organization's financial disclosures, at a minimum, on a quarterly basis to determine its compliance with the Grading Criteria. The review will be completed within 120 days following each reporting period due date, beginning no later than the year 2002. The Department shall prepare a public report of its review that shall indicate:

1. The designation of "met" to be assigned for each grading criteria met by the organization;
2. The designation of "not met" to be assigned for each grading criteria not met by the organization;
3. The designation of "non-compliant" to be assigned to any organization that fails to substantially comply with the reporting obligations, including the submission of the financial survey reports specified in Section 1300.75.4.2.
4. The relative working capital and tangible net equity of each organization, presented as a ratio;
5. Claims payment timeliness in a percentage format reflecting the amount of claims that the organization is paying on a timely basis; and

6. Comparative, aggregated data on all organizations and information that enable consumers to assess the organization's financial data consistent with Section 1300.75.4.4.

NOTE: Authority cited: Sections 1344 and 1375.4, Health and Safety Code. Reference: Section 1375.4, Health and Safety Code.

### **1300.75.4.8. Corrective Action.**

Every contract involving a risk arrangement between a plan and an organization shall require the plan and the organization to comply with a process administered by the Department of Managed Health Care or its designated agent for development and implementation of Corrective Action Plans (CAPs).

(a) Beginning with the financial survey submission filed for the first quarter of calendar year 2002 and ending with the financial survey submission filed for the second quarter of calendar year 2003, organizations reporting working capital deficiencies and/or tangible net equity deficiencies not exceeding 10 - 20 **[select one]** percent for each deficiency, but meeting all other Grading Criteria, shall simultaneously submit a self-initiated standardized CAP, in an electronic format developed by the Department, both to the Department, or its designated agent, and to every plan with which the organization maintains a contract involving a risk arrangement, that meets the requirements of paragraphs 1 through 6 of subdivision (d) of this section. The self-initiated, standardized CAP shall be considered a final CAP.

(1) Timetables specified in the self-initiated standardized CAP for correcting working capital or tangible net equity deficiencies shall not exceed 24 months.

(b) An organization with deficiencies in any of the Grading Criteria that are not subject to a self-initiated standardized CAP as outlined in subdivision (a) above, shall develop a

draft customized CAP that meets the requirements of subdivision (d) of this section and is developed in accordance with the process required by subdivision (e) of this section.

(c) Notwithstanding subdivisions (a) and (b) above, the Department of Managed Health Care or its designated agent may initiate a process for a customized CAP whenever the Department or its designated agent determines: (1) an organization has experienced an event that materially alters the organization's ability to remain compliant with the Grading Criteria, or (2) the Department's review process indicates that the organization lacks sufficient financial or administrative capacity to meet its contractual obligations consistent with the requirements of section 1300.70(b)(2)(H)(1).

(d) All CAPs must include the following elements:

(1) Identification of the Grading Criteria that the organization has failed to meet or any deficiency identified pursuant to subdivision (c) of this section;

(2) The amount by which the organization has failed to meet the Grading Criteria or any deficiency identified pursuant to subdivision (c) of this section, if applicable, and the nature or cause of the deficiency;

(3) Identification of all plans with which the organization has contracts involving a risk arrangement;

(4) A description of the specific actions the organization has taken or will take to correct any deficiency identified in paragraph (1) of this section. The actions shall be appropriate and reasonable in scope and breath, depending upon the nature and degree of the deficiency;

(5) A description of the timeframes for the actions to be taken to correct the deficiency, and a schedule identifying either a monthly or quarterly timeframe for the

organization's filing of periodic progress reports with the Department or its designated agent and contracting health plans. The timeframes shall be appropriate and reasonable, depending upon the nature and degree of the deficiency;

(6) Identification of the name, title, telephone and facsimile numbers, postal and e-mail addresses for the person responsible at the organization for ensuring compliance with the final CAP and for persons responsible at the contracting health plans for monitoring compliance with the final CAP; and

(7) If requested by the Department or its designated agent, a description of the organization's patient record retention and storage policies and procedures and the steps the organization has or will take to ensure that patient medical records are appropriately stored and maintained and will be readily available and transferable to patients in the event the organization ceases operations or the organization fails to meet its obligations set forth in the final CAP. Any such policies and procedures shall be consistent with existing laws relating to the responsibilities for the preservation and maintenance of medical records and the protection of the confidentiality of medical information.

(e) Customized CAP Development:

(1) Within 30 calendar days of filing its quarterly financial survey report indicating a deficiency identified in subdivision (b) or within 60 days of a Departmental request pursuant to subdivision (c) of this section, the organization shall submit a draft CAP, as described in subdivision (d) of this section, in an electronic format developed by the Department, to every plan with which the organization has a contract involving a risk arrangement. The organization shall to the extent possible prepare a single CAP that addresses the concerns of all plans with which the organization maintains a contract that includes a risk arrangement.

(2) Each plan shall have the opportunity to submit comments and recommended revisions to the draft CAP. The plan must submit its comments or recommended revisions to the organization within fifteen (15) calendar days of receipt of the draft CAP.

(3) Within fifteen (15) calendar days of receipt of the plans' comments and recommended revisions to the draft CAP, the organization shall review and consider the comments and recommendations and, if necessary, meet with the plans (individually or collectively) to discuss differences. To the greatest extent possible, the CAP will be standardized to meet the concerns of all plans with which the organization has a contract that includes a risk arrangement.

(4) Within sixty (60) calendar days of filing a quarterly financial survey report indicating a deficiency identified in subdivision (b) or within 90 days of a Departmental request pursuant to subdivision (c) of this section, the organization shall submit a preliminary CAP to the Department or its designated agent and to every plan with which the organization has a contract involving a risk arrangement. The preliminary CAP shall specify which plans have indicated agreement with the preliminary CAP. Within seven (7) calendar days of a request by the Director, the organization shall submit a copy of all prior comments and recommendations received from the plans with which the organization has a contract that includes a risk arrangement.

(5) Within ten (10) calendar days of receipt of the preliminary CAP, any plan not in agreement may submit comments and proposed alternatives to the Department or its designated agent. Any plan submitting comments or proposed alternatives to the Department shall also provide a copy to the organization.

(6) Within seven (7) calendar days of receipt of the nonconcurring plans' comments, the organization may submit responsive comments to the Department or its designated agent, and to every plan with which the organization maintains a contract involving a risk arrangement.

(7) If not all plans agree with the preliminary CAP, the Department or its designated agent may hold meetings with the organization and the plans to attempt to reconcile the differences.

(8) The Department or its designated agent shall approve, approve as amended, disapprove unless modified or disapprove the preliminary CAP within thirty (30) calendar days after receiving it from the organization. If the Department or its designated agent approves or approves with amendment the preliminary CAP, it shall be designated the final CAP. If the Department or its designated agent does not act upon the preliminary CAP within such time, it shall be deemed approved. If the Department or its designated agent disapproves unless modified or disapproves the CAP, the Director shall so notify the organization and the plans and provide the reasons for the disapproval unless modified or the disapproval.

(9) Within ten (10) calendar days of receipt of written notice that the Department or its designated agent disapproves unless modified or disapproves the preliminary CAP, the organization shall amend the preliminary CAP and resubmit it to the Department or its designated agent, and to every plan with which the organization maintains a contract involving a risk arrangement. The plans may submit comments and proposed alternatives to the Department or its designated agent, and to the organization, regarding a resubmitted CAP with which the plan does not agree within seven (7) calendar days of receipt of the resubmitted CAP from the organization. The organization may submit responsive comments to the Department or its designated agent, and to every plan with which the organization maintains a contract involving a risk arrangement, within seven (7) calendar days of receipt of comments from the nonconcurring plan(s). The Department or its designated agent shall approve or approve as modified the resubmitted CAP within thirty (30) calendar days after receiving it. The approved or approved

as modified resubmitted CAP shall become the final CAP. If the Department does not act upon the resubmitted CAP within thirty (30) calendar days, it shall be deemed approved, and shall become the final CAP.

(10) A final CAP shall remain in effect until the organization demonstrates compliance with the requirements of the CAP or the CAP expires in accordance with its own terms.

(f) CAP Reporting:

(1) Each periodic progress report prepared pursuant to a CAP and submitted to the Department and all plans with which the organization has a contract involving a risk arrangement shall include a written verification stating that periodic progress report is true and correct to the best knowledge and belief of a principal officer of the organization, as defined by regulation 1300.45(o) of Title 28 of the California Code of Regulations.

(2) In addition to the periodic progress reports specified in a CAP, every contract involving a risk arrangement between a plan and an organization shall require that: (A) the organization advise the plan and the Department or its designated agent in writing within five (5) calendar days if the organization is not in compliance with the requirements of a final CAP; and (B) the organization, upon the Department's request, provide additional documentation to the Department or its designated agent and the plan to demonstrate the organization's progress towards fulfilling the requirements of a CAP.

#### **1300.75.4.4. Confidentiality**

(f) Corrective Action Plans information:

(1) All supplemental financial information, draft and preliminary CAPs including supporting documentation, and all CAP compliance reports, submitted to the Department or its



designated agent shall be maintained as confidential and proprietary and shall not be released to any party other than the organization and the plans which are subject to it.

(2) The final CAP document, except for disclosures made pursuant to section 1300.75.4.8(d)(4), shall be deemed public information and available for public inspection.

### **1300.75.4.5. Plan Compliance**

(a) Every plan that maintains a risk arrangement with an organization shall have adequate procedures in place to ensure the following:

(1) That plan personnel review all reports and financial information made available pursuant to Health and Safety Code Section 1375.4 and these Solvency Regulations, as part of the plan's responsibility to evaluate and ensure the financial viability of its arrangements consistent with section 1300.70(b)(2)(H)(1) of these regulations;

(2) That the plan, upon notification by the Department to the plan that an organization: (A) has failed to substantially comply with the reporting obligations specified in section 1300.75.4.2; (B) has failed to permit the activities of the Department of Managed Health Care or its designated agent, as required by Health and Safety Code Section 1375.4 or by these Solvency Regulations, or (C) has failed to substantially comply with the requirements of a final CAP, shall not assign or add any additional enrollees to the risk arrangement with the organization, without the prior approval of the Director. This prohibition shall not apply to dependents of enrollees who are already under the risk-arrangement with the organization or to enrollees who selected the organization during an open enrollment or other selection period prior to the effective date of the prohibition on the assignment of additional enrollees. Unless the organization remedies its non-compliance within 30 days of the notification by the Department to the plan, the prohibition on the assignment of additional enrollees shall take effect thirty (30)

days after the date of Department's notification to the plan and shall remain in effect unless and until the Department notifies the plan that the organization's non-compliance has been remedied.

(3) That, once a final CAP is approved for an organization and so long as the organization remains compliant with the requirements of the final CAP, a plan shall not terminate an organization's contract for deficiencies identified in or subject to the final CAP, unless approved by the Director. Notwithstanding this restriction, nothing in these regulations shall limit or impair the Director's authority to require a plan to reassign or transfer plan enrollees to alternate providers on an expedited basis to avoid imminent harm or a disruption in the delivery of health care services.

(4) That the plan complies with the corrective action process and cooperates in the implementation of a final CAP (including but not limited to contingency plans for continuous delivery of health care services to plan enrollees served by the organization).

5) That the plan shall advise the Department or its designated agent in writing within five (5) calendar days of becoming aware that a contracting organization is not in compliance with the requirements of a final CAP.

(b) Every contract involving a risk arrangement between a plan and an organization shall provide that an organization's failure to comply with any of the contractual requirements required by these Solvency Regulations shall constitute a material breach of the risk arrangement contract. A plan shall not waive any contractual requirements required by these solvency regulations.

(c) The failure of a plan to enforce the contractual provisions of subdivision (b) above constitutes grounds for disciplinary action.

(d) On or before May 15, 2002, and annually thereafter with its Plan Annual Survey, every plan that maintains a contract with an organization that includes a risk arrangement shall file with the Department of Managed Health Care a contingency plan that contains the general policies and procedures employed by the plan when the plan terminates a contract with an organization or when a contracting organization ceases operations.

(e) Within 30 days of notification pursuant to section 1300.75.4.5(a)(2)(C) of this regulation, a plan shall submit to the Department of Managed Health Care a specific contingency plan for the deficient organization which provides for the continuity of care for plan enrollees served by the organization.

(f) Any failure of a plan to comply with the requirements of Health and Safety Code Section 1375.4 and these Solvency Regulations shall constitute grounds for disciplinary action against the plan.

(g) The Director may seek and employ any combination of remedies and enforcement procedures provided under the Act, to enforce Health and Safety Code Section 1375.4 and these Solvency Regulations.

**AUTHORITY:**

NOTE: Authority cited: Sections 1344 and 1375.4, Health and Safety Code. Reference: Section 1375.4, of the Health and Safety Code.